

# Decisions of Interest

MAY 15, 2023

## CRIMINAL

### FIRST DEPARTMENT

#### ***People v Williams*** | May 9, 2023

BURGLARY | REASONABLE INNOCENT EXPLANATION | DISSENT

The defendant appealed from a New York County Supreme Court judgment convicting him of 3<sup>rd</sup> degree burglary and sentencing him to 3 1/2 to 7 years. The First Department affirmed. The defendant's conviction was based on his attempted theft of two Red Bull cans from a CVS (he was banned from all CVS stores based on a previous shoplifting incident). Two justices dissented, finding the evidence was susceptible to a reasonable innocent explanation; the defendant intended to purchase the Red Bull. The surveillance video showed that, as the defendant walked toward the front of the store, the store manager stopped him, told him to give her the cans, and asked him to leave—which he did. In the dissent's view, it appeared that the defendant was heading toward the cash register when he was stopped and not the exit. Further, the dissent gave limited weight to the defendant's statements during his police interview. He appeared confused and was unable to distinguish the facts of separate incidents of alleged shoplifting.

[People v Williams \(2023 NY Slip Op 02467\)](#)

#### ***People v Law*** | May 11, 2023

SORA | CLOTHING | DANGEROUS INSTRUMENTS

The defendant appealed from a Bronx County Supreme Court order adjudicating him a level two sex offender. The First Department affirmed. Thirty points were properly assessed for the use of violence based on the defendant's use of a dangerous instrument during the offense. The defendant tried to gag the victim—who was tied face down on a bed—with a necktie and a pair of underwear. Under these circumstances, the manner in which the articles of clothing were used rendered them dangerous instruments.

[People v Law \(2023 NY Slip Op 02594\)](#)

### SECOND DEPARTMENT

#### ***People v Almonte*** | May 10, 2023

PEQUE VIOLATION | PLEA VACATED

The defendant appealed from a Suffolk County Court judgment convicting him of attempted 3<sup>rd</sup> degree CSCS based on his guilty plea. The Second Department reversed, vacated the plea, and remanded. County Court did not warn the defendant—who is not a

US citizen—of the possible deportation consequences of pleading guilty (see *People v Peque*, 22 NY3d 168 [2013]). The People conceded that, combined with the defendant's showing that he probably would have gone to trial had he been warned about the possibility of deportation, the error warranted vacatur of the defendant's guilty plea. Michelle Parisien represented the appellant.

[People v Almonte \(2023 NY Slip Op 02531\)](#)

### ***People v Carranza* | May 10, 2023**

YO DETERMINATION | MANDATORY

The defendant appealed from a Nassau County Supreme Court judgment convicting him of 2<sup>nd</sup> degree assault based on his guilty plea. The Second Department affirmed the conviction but vacated the sentence and remitted for a YO determination. A court must make a YO determination in every case where the defendant is eligible, even in the absence of a request or where there is a plea agreement to forgo the determination (see CPL 720.20 [1]). Jillian S. Harrington represented the appellant.

[People v Carranza \(2023 NY Slip Op 02535\)](#)

## THIRD DEPARTMENT

### ***People v Robinson* | May 11, 2023**

SIROIS HEARING REQUIRED | REVERSED

The defendant appealed from an Albany County Supreme Court judgment convicting him of aggravated criminal contempt after a jury trial. The Third Department reversed. Before trial, the complainant stated that she would not testify. The People moved for a *Sirois* hearing, seeking to introduce her written statement. Supreme Court erred by summarily granting the motion. The evidence did not “so overwhelmingly establish witness-tampering as to satisfy the clear and convincing standard and render a *Sirois* hearing superfluous.” The People produced a series of jail calls in which the defendant allegedly asked an unknown male to discourage the complainant from testifying and told the complainant herself not to go to court. The evidence was subject to competing inferences, and the defendant should have been afforded an opportunity to test the causal link between the complainant's refusal to testify and the jail calls. The error was not harmless. Mitchell S. Kessler represented the appellant.

[People v Robinson \(2023 NY Slip Op 02561\)](#)

## FOURTH DEPARTMENT

### ***People v Partlow* | May 9, 2023**

MANSLAUGHTER | DVSJA | SENTENCE HALVED

The defendant appealed from an Erie County Supreme Court judgment convicting her, upon a jury verdict, of 1<sup>st</sup> degree manslaughter. (Appellant's counsel states that the original sentence imposed, which is not set forth in the decision, was eight years followed by five years' postrelease supervision.) The Fourth Department modified the judgment, reducing the sentence to a determinate term of four years followed by 2½ years' postrelease supervision, pursuant to the DVSJA (Penal Law § 60.12). As noted in an

amicus brief filed by members of the New York State Senate and Assembly, the DVSJA is designed “to provide a more compassionate sentencing scheme for survivors of domestic violence who committed offenses related to that abuse,” even where a jury has rejected a justification defense—as they did in the instant case. A preponderance of the evidence supported a finding that the defendant was a victim of domestic violence during her relationship with the victim; she was subjected to substantial physical, sexual or psychological abuse; and such abuse was a significant contributing factor to her criminal behavior. Further, imposing a sentence pursuant to the normal sentencing range would be “unduly harsh,” given the nature and circumstances of the crime and the history, character, and condition of the defendant. Davis Polk & Wardwell, LLP (Nikolaus J. Williams, of counsel) represented the appellant. Duane Morris LLP (Eric R. Breslin, of counsel) filed an amici curiae brief on behalf of 17 legislators.  
[People v Partlow \(2023 NY Slip Op 02479\)](#)

## APPELLATE TERM

***People v LaClair*** | Docket No. 2021-671 N CR

PEOPLE’S APPEAL | CPL 30.30 | MODIFIED

The People appealed from a Nassau County District Court order that granted the defendant’s motion to strike the People’s COC and dismiss the charges on speedy trial grounds. The Appellate Term modified by denying the defendant’s motion to dismiss. The People’s COC/SOR were invalid, but 79 days of the delay following their filing were not chargeable to the People. The defendant had consented to those adjournments, and there was no indication that the People acted with intentional deception when declaring readiness (*cf. People v Sanchez*, 170 Misc 2d 399 [Sup Ct, Bronx County 1996]; *People v Blue*, 114 Misc 2d 383 [Sup Ct, Kings County 1982]).

## TRIAL COURTS

***People v B.D.*** | 2023 WL 3331244

OMH REQUEST | CONVERSION TO CIVIL CONFINEMENT | DENIED

New York State Office of Mental Health (OMH) moved to convert the defendant’s criminal confinement to civil confinement, pursuant to *Jackson v Indiana* (406 US 715 [1972]). New York County Supreme Court denied the motion. There is no procedural mechanism for OMH to intervene or be joined in a criminal proceeding, nor does it have a basis to seek relief under *Jackson*. The relief sought would deny the defendant his remedy for release under CPL 730.50 and result in him becoming financially responsible for his own care. The Legal Aid Society of NYC (Rosemary Vassallo, of counsel) represented the defendant.

[People v B.D., 2023 NY Slip Op 23141](#)

***People v Williams*** | 2023 WL 3297215

WARRANT OVERLY BROAD | CELL PHONE DATA

The defendant moved to suppress cell phone records and data seized pursuant to a search warrant. Albany County Supreme Court partially granted the motion. The

complainant's statement passed the *Aguiliar-Spinelli* test and provided probable cause for the warrant. But the warrant's temporal range—from the week before through the week after the alleged incident—was overly broad. The overbroad portion of the warrant could be severed, and probable cause supported seizure of records of the cell phone's location during an eight-hour period covering the incident. The warrant was executed by fax from Albany, NY to AT&T in Florida, but any technical violation of CPL 690.20 (2) did not violate the defendant's constitutional rights and exclusion of the records was not warranted. Francisco Calderon represented the defendant.

[People v Williams, 2023 NY Slip Op 23137](#)

## TENNESSEE

***US v Bray*** | Docket No. 11-cr-20206

COMPASSIONATE RELEASE | GRANTED

The defendant filed a motion seeking compassionate release from her 168-month sentence for her conviction of conspiracy to engage in sex trafficking of children. The US District Court for the Western District of Tennessee granted the motion. A sentencing court may reduce a sentence if warranted by extraordinary and compelling reasons, where consistent with policy statements and sentencing factors (see 18 USC § 3582 [c] [1] [A]). When a prisoner moves pro se, the court may determine the motion without regard to policy statements (see *US v Jones*, 980 F3d 1098, 1108-10 [6th Cir 2020]). The defendant was sexually abused as a child, introduced to sex trafficking herself at age 15 or 16, and only 18 years old at the time of the offense. This information, combined with the required showing of extraordinary and compelling changes in circumstance since sentencing, warranted a sentence reduction to time served. The defendant had already served over eleven years; demonstrated her rehabilitation; been sexually assault by a correctional officer while imprisoned; and needed to care for her elderly grandmother.

## FAMILY

## THIRD DEPARTMENT

***Matter of Laura E. v John D.*** | May 11, 2023

PARENTING TIME | IMPROPER DELEGATION OF AUTHORITY

The father appealed from a Saratoga County Family Court order that granted the mother sole legal custody and primary physical custody, and the father parenting time as the parties may mutually agree, with the mother retaining discretion over whether his parenting time required supervision. The Third Department upheld the custodial award but reversed the parenting time provision and remitted for further proceedings. The Family Court improperly delegated its authority to the mother to determine what, if any, parenting time the father should have. Given the passage of time and sensitive circumstances presented in this case, the Third Department remitted for a determination of whether parenting time with the father is appropriate and, if so, what type and frequency of

visitation would be in the child's best interest. Gerard V. Amedio represented the father on appeal.

[Matter of Laura E. v John D. \(2023 NY Slip Op 02568\)](#)

***Matter of Nina VV. (Wendy VV.)*** | May 4, 2023

NONCUSTODIAL PARENT | ACCOUNTABLE FOR CUSTODIAL PARENT'S NEGLECT

The mother appealed from a Delaware County Family Court neglect order. The Third Department affirmed. The child had lived with the father for many years. In early 2020, the petitioner cited concerns about the father's care of the child and asked the mother to identify potential resources for the child. The mother failed to do so. At the fact-finding hearing, she admitted that she knew about the impairment of the child but argued that a noncustodial parent could not be found to have neglected a child. That was incorrect. A noncustodial parent may be held accountable for neglectful acts of the other parent if she knew, or reasonably should have known, that the child was in danger. Here the mother refused to cooperate in efforts to address the child's problems (see *Matter of Clayton OO. [Nikki PP.]*, 101 AD3d 1411 [3d Dept 2012] [mother was not willing to make reasonable effort to work with petitioner regarding son in imminent danger; she abdicated parental responsibility]; *Matter of Erica B. v Quentin B.*, 79 AD3d 415 [1st Dept 2010] [father knew mother was not properly caring for children and allowed harm to be inflicted on them; fact that order of protection barred him from contact with children did not relieve him of parental duties]).

[Matter of Nina VV. \(Wendy VV.\) \(2023 NY Slip Op 02355\)](#)

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